

JUN 19 2006

PTO/SB/61 (10-05)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

<b>PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED UNAVOIDABLY UNDER 37 CFR 1.137(a)</b>		Docket Number (Optional) <b>QUES1-P2960</b>
First Named Inventor: <b>William E. Low</b> Application Number: <b>10/699,710</b> Filed: <b>November 3, 2003</b> Title: <b>DIELECTRIC BIAS SYSTEM</b>		Art Unit: <b>2831</b> Examiner: <b>Chau N. Nguyen</b>
<p>Attention: Office of Petitions <b>Mail Stop Petition</b> Commissioner for Patents P.O. Box 1450 Alexandria, VA 22313-1450</p> <p>NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (571) 272-3282.</p> <p>The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus any extensions of time actually obtained.</p> <p><b>APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION.</b> NOTE: A grantable petition requires the following items: (1) Petition fee. (2) Reply and/or issue fee. (3) Terminal disclaimer with disclaimer fee-required for all utility and plant applications filed before June 8, 1995, and for all design applications; and (4) Adequate showing of the cause of unavoidable delay.</p> <p>1. Petition fee <b>250.00</b> <input checked="" type="checkbox"/> Small entity – fee \$ _____ (37 CFR 1.17(l)). Applicant claims small entity status. See 37 CFR 1.27. <input type="checkbox"/> Other than small entity – fee \$ _____ (37 CFR 1.17(l)).</p> <p>2. Reply and/or fee A The reply and/or fee to the above-noted Office action in the form of _____ (identify the type of reply): <input type="checkbox"/> has been filed previously on _____. <input type="checkbox"/> is enclosed herewith.   06/20/2006 MGBREM2 00000010 10699710 B The issue fee of \$ <b>700.00</b>   02 FC:2452 250.00 0P <input type="checkbox"/> has been filed previously on _____. <input checked="" type="checkbox"/> is enclosed herewith.</p>		

[Page 1 of 3]

This collection of information is required by 37 CFR 1.137(a). The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.11 and 1.14. This collection is estimated to take 8 hours to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments on the amount of time you require to complete this form and/or suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. Box 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

## 3. Terminal disclaimer with disclaimer fee

Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.

A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ \_\_\_\_\_ for a small entity or \$ \_\_\_\_\_ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

## 4. An adequate showing of the cause of the delay, and that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(a) was unavoidable, is enclosed.

**WARNING:**

Petitioner/applicant is cautioned to avoid submitting personal information in documents filed in a patent application that may contribute to identity theft. Personal information such as social security numbers, bank account numbers, or credit card numbers (other than a check or credit card authorization form PTO-2038 submitted for payment purposes) is never required by the USPTO to support a petition or an application. If this type of personal information is included in documents submitted to the USPTO, petitioners/applicants should consider redacting such personal information from the documents before submitting them to the USPTO. Petitioner/applicant is advised that the record of a patent application is available to the public after publication of the application (unless a non-publication request in compliance with 37 CFR 1.213(a) is made in the application) or issuance of a patent. Furthermore, the record from an abandoned application may also be available to the public if the application is referenced in a published application or an issued patent (see 37 CFR 1.14). Checks and credit card authorization forms PTO-2038 submitted for payment purposes are not retained in the application file and therefore are not publicly available.



Signature

**J. Mark Holland**

Typed or printed name

**3 San Joaquin Plaza, Suite 210**

Address

**Newport Beach, CA 92660**

Address



Date

**32,416**

Registration Number, if applicable

**949-718-6750**

Telephone Number

Enclosure  Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unavoidable delay

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**CERTIFICATE OF MAILING OR TRANSMISSION (37 CFR 1.8(a))**

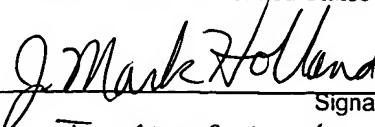
I hereby certify that this correspondence is being:

deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (571) 273-8300.



Date



Signature

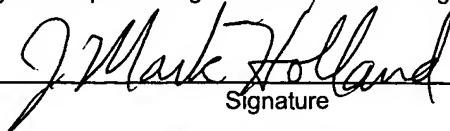


Typed or printed name of person signing certificate

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**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED  
UNAVOIDABLY UNDER 37 CFR 1.137(a)**

NOTE: The following showing of the cause of unavoidable delay must be signed by all applicants or by any other party who is presenting statements concerning the cause of delay.



Signature



Date

**J. Mark Holland**

Typed or printed name

**32,416**

Registration Number, if applicable

(In the space provided below, please explain in detail the reasons for the delay in filing a proper reply.)

MPEP §711.03(c) provides that:

A delay resulting from an error (e.g., a docketing error) on the part of an employee in the performance of a clerical function may provide the basis for a showing of "unavoidable" delay, provided it is shown that:

- (A) the error was the cause of the delay at issue;
- (B) there was in place a business routine for performing the clerical function that could reasonably be relied upon to avoid errors in its performance; and
- (C) the employee was sufficiently trained and experienced with regard to the function and routine for its performance that reliance upon such employee represented the exercise of due care.

As set forth in my attached declaration, my firm has an established system for docketing and tracking intellectual property matters. Among the procedures we use are (a) the docketing of reminders and deadlines in the firm's proprietary database, (b) staff meetings to review and discuss docketed deadlines, and (c) status reports to our clients regarding their IP matters. Within our office, the lead paralegal has the primary responsibility for complying with all deadlines and following established procedures for files they are responsible for.

The foregoing procedures have been successful in safeguarding the intellectual property assets that my clients have entrusted to my care since my firm began in about 1995. As set forth in the attached declaration of Mark Duncan, before missing the deadline in this matter, he had successfully administered these procedures with regard to the files for which he was responsible. Mr. Duncan possessed the experience and competence to be the Senior Paralegal at my firm. Certainly, as Senior Paralegal at my firm, Mr. Duncan had previously given me no cause to for concern with regard to following the procedures outlined above.

As set forth in MPEP §§ 711.03(c), it is reasonable to rely on trusted employees utilizing the means normally employed to conduct "important business". Further, "[I]f unexpectedly, or through the unforeseen fault or imperfection of these agencies and instrumentalities, there occurs a failure, it may properly be said to be unavoidable, all other conditions of promptness in its rectification being present." In re Mattullath, 38 App. D.C. 497, 514-15 (1912)(quoting Pratt, 1887 Dec. Comm'r Pat. 31, 32-33 (1887)).

As set forth above, and in the attached declarations, non-payment of the issue fee on or before the deadline in this matter was an aberration. Because of this aberration from the established norm, by a trustworthy employee, the untimely issue fee payment was unavoidable.

As noted in the attached declarations, we have taken steps to immediately rectify the situation. Noticing his mistake, Mr. Duncan promptly reported his error and we responded by filing this petition. We have revised our database to include automatic docketing of all relevant deadlines for patent Notices of Allowance, and are revising our docketing system to include automatic docketing for all written communications we receive from the Patent and Trademark Office.

(Please attach additional sheets if additional space is needed.)



Docket No. QUES1-P2960

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: William E. Low and Richard Vandersteen

Serial No.: 10/699,710 Art Unit: 2831

Filed: November 3, 2003 Examiner: Chau N. Nguyen

For: DIELECTRIC BIAS SYSTEM

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Mail Stop: Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF J. MARK HOLLAND IN SUPPORT OF PETITION TO REVIVE  
UNAVOIDABLY ABANDONED APPLICATION PURSUANT TO MPEP §711.03(c)**

I, J. Mark Holland, being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declare as follows:

1. My patent bar number is 32,416, and I have been practicing before the USPTO since the end of December 1986.
2. I have been the sole and principal partner of J. Mark Holland & Associates, an intellectual property firm, since approximately 1995.
3. Since forming my firm, I continued preceding docketing systems with which I was familiar from my work in other law firms, and have developed and refined systems and guidelines for docketing, for use by my support staff.
4. Among the procedures we use to docket and track intellectual property matters are (a) the docketing of reminders and deadlines in the firm's proprietary database, (b) staff meetings to review and discuss docketed deadlines, and (c) status reports to our clients regarding their IP matters. Within our office, we normally place the primary responsibility for complying with all deadlines on the lead paralegal having responsibility for the file. In the above-referenced case, the paralegal in our office was our Senior Paralegal, Mark Duncan. From my review of the situation, it appears that, due to personal

issues, Mr. Duncan did not follow our normal procedures in this particular application.

5. Had our normal procedures been followed, I do not believe that we would have missed the June 13, 2006 deadline to pay the issue fee in the above-referenced matter. I first learned that we had missed that deadline on June 14, 2006 (the morning after the deadline), when Mr. Duncan alerted me to the issue.

6. More specifically, as Mr. Duncan was generating a status report for Applicant, he discovered that he had neglected to properly update the docketing for the above-referenced Patent Application Serial No. 10/699,710.

7. The foregoing missed deadline was a consequence of the docketing not being adequately updated pursuant to firm procedures.

8. During his tenure at my firm, Mr. Duncan has heretofore proved to be a reliable and valuable employee.

9. I trust that the foregoing incident was an aberration, and that Mr. Duncan will continue to follow appropriate firm procedures henceforth.

10. In any case, as a consequence of this situation, we have revised our database to include automatic docketing of all relevant deadlines for patent Notices of Allowance, and we are revising our docketing system to include automatic docketing for every written communication we receive from the Patent and Trademark Office.

11. All statements herein are made of my own knowledge and are true, and all statements made on information and belief are believed to be true.

Signed at Newport Beach, CA, this 15<sup>th</sup> day of June, 2006.

  
\_\_\_\_\_  
J. Mark Holland  
J. Mark Holland & Associates  
3 San Joaquin Plaza, Suite 210  
Newport Beach, CA 92660



No. QUES1-P2960

PATENT

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: William E. Low and Richard Vandersteen

Serial No.: 10/699,710 Art Unit: 2831

Filed: November 3, 2003 Examiner: Chau N. Nguyen

For: DIELECTRIC BIAS SYSTEM

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Mail Stop: Petitions  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

**DECLARATION OF MARK DUNCAN IN SUPPORT OF PETITION TO REVIVE  
UNAVOIDABLY ABANDONED APPLICATION PURSUANT TO MPEP §711.03(c)**

I, Mark Duncan, being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code, and that such willful false statements may jeopardize the validity of the application or any resulting registration, declare as follows:

1. I am the Senior Paralegal at J. Mark Holland & Associates, and in this capacity I have personal knowledge of the facts below regarding U.S. Patent Application Serial No. 10/699,710, for a DIELECTRIC BIAS SYSTEM.
2. I graduated from an ABA accredited paralegal school in 1992, and have been employed full time as a paralegal for approximately 13 years.
3. My paralegal work experience includes government, as well as large and small firms, and I have advanced in responsibility in every paralegal position I have held.
4. During approximately the last 7 years, I have been employed as an Intellectual Property (IP) paralegal, including the last three and one half years in my current position.
5. During my tenure as an IP paralegal, and specifically at J. Mark Holland & Associates, I have been responsible for document preparation, filing, and docketing for patent and trademark files for multiple clients.

Docket No. QUES1-P2960 ..... Serial No. 10/699,710

6. At J. Mark Holland & Associates, I am responsible for reviewing documents from the USPTO as we receive them, for calculating and docketing deadlines based on those documents, for preparing the appropriate correspondence or responsive documents, and for bringing same to the attention of the appropriate attorney or attorneys.

7. On or about March 16, 2006, we received the March 13, 2006 Notice of Allowance and Issue Fees Due in the above-referenced matter.

8. On or about March 27, 2006, I prepared correspondence to the Applicant regarding the Notice of Allowance, but failed to update the docketing for this file after that date.

9. While reviewing docketing for the Applicant on June 14, 2006, I discovered that because I neglected to review and update docketing in this matter pursuant to established firm procedures, the June 13, 2006 deadline to pay the issue fee in the above-referenced matter was missed.

10. In my experience as an IP paralegal, this is the first time that a file for which I have been responsible has gone abandoned due to my mistake.

11. All statements herein are made of my own knowledge and are true, and all statements made on information and belief are believed to be true.

Signed at Victorville, CA, this 15 day of June, 2006.



Mark Duncan, Senior Paralegal  
J. Mark Holland & Associates  
3 San Joaquin Plaza, Suite 210  
Newport Beach, CA 92660